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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SEAPOINT PROPERTIES, LLC, Plaintiff, Cross-Defendant and Respondent, v. WILLIAM M. HENRICH, Defendant, Cross-Complainant and Appellant.	D048132 (Super. Ct. No. GIC840513)

APPEAL from a judgment of the Superior Court of San Diego County, Steven R. Denton, Judge. Affirmed.

William Henrich appeals from a judgment in favor of Seapoint Properties, LLC (Seapoint) awarding Seapoint breach of contract damages for unpaid rent, late charges and interest after Henrich vacated leased commercial premises. In part, the court found Henrich had exercised a lease renewal option for an additional 36-month term at a $1350 monthly rate, but breached the lease by abandoning the premises. On appeal, Henrich

asks this court to hold as a matter of contract interpretation that his exercise of the option was not effective until the parties mutually agreed upon the fair market value rent, and as a consequence of the parties' failure to agree, he operated under a month-to-month tenancy. Challenging the trial court's denial of his new trial motion, Henrich further contends the court erred by excluding a statement from Seapoint's attorney pertaining to Seapoint's right to evict him from the premises. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We state the factual background from the undisputed facts and evidence in the record and from the trial court's statement of decision. In April 1996, Henrich, an attorney, entered into a three-year lease agreement with Murphy Canyon Partners for commercial premises located at 4909 Murphy Canyon Road. In June 1999, Henrich and Murphy Canyon Partners executed a first amendment renewing and extending the term for 36 months, and increasing the monthly base rent to $1,350. The first amendment contained the following "Renewal Option" provision (hereafter the option): "Upon ninety (90) days' prior written notice, Lessee shall have the option to further extend and renew the term of the Lease for one (1) additional period of thirty-six (36) months upon the same terms and conditions as in this Lease, except for Base Rent, which shall be based upon 95% of the then current fair market value as may be mutually agreed upon by Lessor and Lessee."

In March 2002, Henrich hand-delivered a letter to a Murphy Canyon Partners representative stating he was exercising his option to renew the lease and asking the representative to respond with what he believed was the current rental rate. The

representative did not respond, but Murphy Canyon Partners continued to send Henrich bills reflecting the $1,350 rental rate.

On April 7, 2003, Henrich signed an estoppel certificate addressed to Seapoint certifying the terms of his lease. In part, the estoppel certificate read: "Tenant is currently obligated to pay annual base rental of $16,200.00 in monthly installments of $1,350.00 per month and monthly installments of base rental have been paid through April 30, 2003. The Lease expired on June 30, 2002." On the last sentence, Henrich crossed out the words, "expired on June 30, 2002" and handwrote, "will expire on June 30, 2005." In the margin next to a paragraph certifying he was a tenant under the June 1999 amendment, Henrich also handwrote, "(extended per ¶ 8 first amendment)." The final paragraph of the estoppel certificate provided: "This Estoppel Certificate is made to Purchaser in connection with the prospective purchase by Purchaser, or Purchaser's assignee, of the property containing the Premises. This Estoppel Certificate may be relied on by Purchaser and any other party who acquires an interest in the Premises in connection with such purchase or any person or entity which may finance such purchase and their respective successors and assigns."

In June 2003, Seapoint acquired the building and became the assignee of Henrich's lease. Later that month, Seapoint's managing member Gregg Seaman advised Henrich by letter that he had received the estoppel certificate referencing Henrich's exercise of the option. Seaman wrote that the prior owner had no record of receiving Henrich's letter extending the lease and did not believe that any such extension existed, but that Seapoint was willing to accept Henrich's exercise of the option "provided rent is adjusted to 95

percent of market rent and all rents are prorated to the current market rent as of July 1[,] 2002[,] (the date of option renewal)." Seaman expressed his opinion that the monthly rent based on comparable properties would be $1,760 per month, and asked Henrich "for [his] concurrence to the lease rate."

For several months thereafter, the parties engaged in a series of oral and written negotiations focusing to some degree on a new lease. Henrich sought to negotiate for additional tenant improvements and Seapoint proposed a five year lease term extending beyond June 30, 2005. Seaman, however, committed to charging Henrich $1,350 in rent until they could agree upon a new rate.

In October 2003, Seaman abandoned his efforts to negotiate a new lease and made a "one time" offer to Henrich under the terms of the option, in which Henrich would pay $1760 in monthly rent effective July 1, 2003, until his lease expired on June 20, 2005. In April 2004, Henrich notified Seaman of his intent to vacate the premises. At no time before Henrich gave his notification to vacate did he tell Seaman he was a month-to-month tenant, that he had the right to terminate his lease upon 30 days notice, or that his lease term expired sooner than June of 2005. Henrich vacated the premises as of May 1, 2004.

Seapoint sued Henrich for breach of contract. It alleged Henrich breached the April 1996 lease by failing to pay rent from May 1, 2004, to June 30, 2005, and paid less than the full amount of rent from July 1, 2002, through April 30, 2004. Henrich answered and filed a cross-complaint for an accounting of his withheld security deposit.

The matters proceeded to a bench trial after which the court issued an oral statement of decision. Based upon detailed findings of fact, the court ruled in part that (1) Henrich had validly exercised the option for a 36-month term ending June 30, 2005, as referenced in his execution of the estoppel certificate showing the option's exercise, the lease term, and the $1,350 monthly rate; (2) Seapoint, which had assumed the legal rights of the prior owner, accepted that rate and was estopped from asserting a higher rate based on its own and the prior owner's acts and statements; and (3) Henrich breached the lease by abandoning the space and owed Seapoint 12 months in rent totaling $16,200 as well as a $972 late charge and prejudgment interest. The court later modified its decision to reflect a credit to Henrich for his security deposit, resulting in a net award to Seapoint of $15,100 in rent, $972 in late charges, and $1,510 in prejudgment interest. On February 17, 2006, the court entered judgment in Seapoint's favor for $17,582 in damages and interest and $1,173 in costs.

On February 23, 2006, Henrich filed a notice of appeal from the court's judgment. In March 2006, Henrich filed a notice of intent to move for a new trial, accompanied by his declaration setting forth an offer of proof about a telephone conversation he had with a Seapoint attorney. On May 5, 2006, Henrich filed an amended notice of appeal stating he was appealing both the judgment and also the trial court's April 20, 2006 order denying his new trial motion.

DISCUSSION

I. *Request to Dismiss Appeal Based on Amended Notice of Appeal*

Preliminarily, we address Seapoint's request that we dismiss Henrich's appeal to the extent it is based on his amended notice of appeal. Seapoint argues the trial court's ruling on Henrich's new trial motion, which it points out is not in the record, is not directly appealable, and as to the February 17, 2006 judgment, the amended notice of appeal is untimely. Henrich responds that the trial court effectively denied his motion by failing to rule upon it (Code Civ. Proc., § 660), and his appeal should not be dismissed because we may review the trial court's new trial order on appeal from the final judgment.

As we understand its argument, Seapoint is not requesting wholesale dismissal of Henrich's appeal; it does not argue Henrich's May 2006 amended notice of appeal somehow superceded or canceled his first timely notice of appeal from the February 2006 judgment. Both parties agree this court may review the trial court's new trial order from that judgment. We proceed to do so, on the settled principle that a notice of appeal must be liberally construed. (Cal. Rules of Court, rule 8.100(a)(2); *Jones v. Lodge at Torrey Pines Partnership* (2007) 147 Cal.App.4th 475, 492; see also *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 19-20.) Under this rule, we construe Henrich's May 2006 notice of appeal as supplementing his February 2006 notice of appeal to reflect his intent to raise additional issues relating to the trial court's order denying a new trial in connection with his appeal from the judgment. We decline to dismiss Henrich's appeal in whole or in part.

II. *Henrich Exercised A Valid Option Upon Delivery of His March 2002 Letter*

A. *Standard of Review*

We apply established appellate standards of review for this judgment following a bench trial. We begin with the settled principle that the interpretation of a contract, including a lease and lease amendments, generally presents a question of law for this court to determine anew unless the interpretation turns on the credibility of conflicting extrinsic evidence. (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 527; *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; *ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266; *City of El Cajon v. El Cajon Police Officers' Assn.* (1996) 49 Cal.App.4th 64, 70-71.) When a contract is reasonably susceptible to different interpretations based upon conflicting extrinsic evidence requiring the resolution of credibility issues, its interpretation evolves into a question of fact to which the reviewing court applies the substantial evidence standard of review. (*ASP Properties*, at pp. 1266-1267.) Where the evidence is undisputed and the parties draw conflicting inferences, the reviewing court will independently draw inferences and interpret the contract. (*Id*. at p. 1267; *City of El Cajon*, at p. 71; *Parsons v. Bristol Development Co.*, 62 Cal.2d at pp. 865-866, fn. 2.) We endeavor to effectuate the mutual intentions of the parties as it existed at the time of contracting insofar as it is ascertainable and lawful. (Civ. Code, § 1636; *City of El Cajon*, at p. 71.)

B. *Interpretation of the Option*

Asking this court to interpret the option as a matter of law, Henrich contends the option was never validly exercised because its exercise was a "two-step" process

requiring first that Henrich give notice of his intent to exercise the option, and second that the parties reach mutual agreement on the fair market value rent. Pointing out it is undisputed the parties had not reached agreement as to the amount of rent to be charged under the option, Henrich maintains mutual agreement as to the rent was a condition precedent to the complete exercise of the option; that "prior agreement on the amount of rent was a material and bargained for provision of lease extension."

We again set out the language of the option, highlighting the phrase on which Henrich focuses:

> Upon ninety (90) days prior written notice, Lessee shall have the option to further extend and renew the term of the Lease for one (1) additional period of thirty-six (36) months upon the same terms and conditions as in this Lease, *except for Base Rent, which shall be based upon 95% of the then current fair market value as may be mutually agreed upon by Lessor and Lessee*.

Interpreting this language de novo compels us to reject Henrich's argument that mutual agreement as to fair market value rent was a condition precedent to his valid exercise of the option.[1] "[P]rovisions of a contract will not be construed as conditions precedent in the absence of language plainly requiring such construction." (*Rubin v. Fuchs* (1969) 1 Cal.3d 50, 53; see also *Alpha Beta Food Markets v. Retail Clerks* (1955) 45 Cal.2d 764, 771 ["stipulations in an agreement are not to be construed as conditions precedent unless such construction is required by clear, unambiguous language; and particularly so where a forfeiture would be involved or inequitable consequences would

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1 Civil Code section 1436 defines a condition precedent as "one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed."

result"]; *Frankel v. Board of Dental Examiners* (1996) 46 Cal.App.4th 534, 550 ["[C]ourts shall not construe a term of the contract so as to establish a condition precedent absent plain and unambiguous contract language to that effect"].) Conditions precedent "are not favored by the law, and are to be strictly interpreted against one seeking to avail himself of them." (*Antonelle v. Kennedy & Shaw Lumber Co.* (1903) 140 Cal. 309, 315; *Frankel*, at p. 550.)

Under these principles, we cannot reasonably interpret the highlighted language as a condition precedent to the option's exercise. The option provision does not clearly and unambiguously indicate under any reasonable interpretation that the parties must mutually agree upon rent as a prerequisite or precondition to valid exercise of the option. The option clause does not use the phrase "subject to," which is generally construed to impose a condition precedent (*Rubin v. Fuchs*, *supra*, 1 Cal.3d at p. 54), and we will not rewrite the option to read: ". . . based upon 95% of the then current fair market value as *shall* be mutually agreed upon by Lessor and Lessee." Henrich asserts the "option in this case necessarily includes the provision that the parties *would agree* as to the amount of rent due." But that is not the language of the option. The provision merely states that base rent "shall be based upon 95 percent of the then current fair market value as *may* be mutually agreed by the parties." (Italics added.) In general, "[t]he words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning." (Civ. Code, § 1644; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 608.) While "may" sometimes means "shall" in statutes, "may" is generally understood by laymen as permissive. (*Gipson v. Davis Realty Co.* (1963) 215 Cal.App.2d 190, 202.)

"The ordinary import of 'may' is a grant of discretion." (*In re Richard E.* (1978) 21 Cal.3d 349, 354, citing *Housing Authority v. Superior Court* (1941) 18 Cal.2d 336, 337.) Read in its ordinary and popular sense, the provision means that the parties had the right or ability, but not an obligation, to agree on the current fair market valuation upon the option's exercise.

The result of the foregoing interpretation of this provision is not, as Henrich seems to argue, an invalid agreement to agree in the future. It results in an enforceable renewal option because the option sets an " 'ascertainable standard' " for the determination of rent. (See *Miner v. Tustin Avenue Investors, LLC* (2004) 116 Cal.App.4th 264, 274 (*Miner*); *Etco Corp v. Hauer* (1984) 161 Cal.App.3d 1154, 1161-1162 (*Etco*).) Relying on *Etco*, *Miner* explained: "Some option provisions are so uncertain as to amount to nothing more than an agreement to agree. *Etco*, *supra*, 161 Cal.App.3d 1154, 1155 . . . involved a lease option providing for rent to be determined by mutual agreement of the parties at the time of exercise of the option. In *Etco*, the court asked if the lease agreement contained an 'ascertainable standard' for the determination of rent and concluded it did not. [Citation.] Similarly, in *Ablett v. Clauson* (1954) 43 Cal.2d 280, 284 . . . , the option agreement extended the lease upon ' "terms to be then agreed upon." ' Our Supreme Court stated, '[A]n option agreement which leaves an essential term to future agreement is not enforceable.' [Citation.] [¶] But option agreements may be enforceable even where they do not specify the exact amount of future rents, so long as there is an ascertainable standard for the determination of rent. [Citation.] In such situations, courts 'are not making a new contract for the parties but merely compelling the parties to do what they

contemplated at the time they initially contracted.' " (*Miner, supra*, 116 Cal.App.4th at p. 274.) Reversing the trial court's order granting summary adjudication, the court of appeal in *Miner* did not reach the tenant's request that it declare a lease provision for "market rent" too vague to be enforceable because the parties had not developed the issue in the trial court. (*Ibid.*)

In *Ecto*, the court of appeal reviewed out-of-state authorities on the issue and explained that those courts adopting its view found renewal option provisions with a sufficiently definite method for determining future rent would include provisions requiring determination by arbitration or appraisal, or referencing fair market rents for similar properties at the time of establishment of the future rent. (*Etco, supra*, 161 Cal.App.3d at p. 1157.) Here, the contracting parties inserted an objective, nonarbitrary formula for determining base rent – 95 percent of the then current fair market value – that was sufficiently definite to be enforceable by a court of law or arbitrator in the event the parties could not mutually agree on the then current fair market value. (*Goodwest Rubber Corp. v. Munoz* (1985) 170 Cal.App.3d 919, 921.) *Goodwest Rubber* summarizes the law in the context of a purchase option: "Option agreements have generally been held . . . sufficiently definite as to price to justify their enforcement if either a specific price is provided in the agreement or a practicable mode is provided for the court to determine price without any new expression by the parties themselves. [Citation.] [¶] 'Fair market value' is a well-established means of property valuation and [establishing such value] is a common task performed by courts on a daily basis. [Citation.] Specifying 'fair market value' as the price to be paid when exercising the option to purchase does not require

future agreement of the buyer and seller. It is a proper substitute for a specific purchase price and will support an action for specific performance." (*Goodwest Rubber Corp. v. Munoz, supra,* 170 Cal.App.3d at p. 921; see also *Carver v. Teitsworth* (1991) 1 Cal.App.4th 845, 853 [California law is clear that so long as price may be objectively determined, a contract in which the price is not expressed may nonetheless be enforced]; see generally Rest.2d Contracts, § 33(2) [terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy].) *Goodwest*'s analysis is equally applicable to a renewal option specifying that base rent shall be based on the current fair market value.

Our interpretation is also consistent with the character of this provision as a renewal option. "An option contained in a lease is itself a contract, distinct from the lease to which the option relates." (*Ripani v. Liberty Loan Corp*. (1979) 95 Cal.App.3d 603, 609, citing *Warner Bros. Pictures v. Brodel* (1948) 31 Cal.2d 766, 771.) As a matter of legal theory, an option is considered to have a dual nature: on the one hand it is an irrevocable offer, which upon acceptance ripens into a bilateral contract, and on the other hand, it is a unilateral contract which binds the optionor to perform an underlying agreement upon the optionee's performance of a condition precedent. (*Palo Alto Town & Country Village, Inc. v. BBTC Company* (1974) 11 Cal.3d 494, 502 (*Palo Alto*).) From the optionor's point of view, "it is binding upon the making of the option contract. '[T]he optionor has irrevocably promised upon the exercise of the option to perform the contract or make the conveyance upon the terms specified in his binding offer. . . . The creation of the final contract requires no promise or other action by the optionor, for the contract

is completed by the acceptance of the irrevocable offer of the optionor by the optionee. "The contract has already been made, as far as the optionor is concerned, but is subject to conditions which are removed by the acceptance." ' " (*Id*. at p. 503.) From the viewpoint of the optionee, an option is an irrevocable offer that the optionee can convert into a binding bilateral contract by acceptance. (*Ibid*.) "[O]n acceptance, an option becomes a contract that is binding on both parties." (*Ibid*.) In *Palo Alto*, the court reviewed the foregoing principles to hold that exercise of an option becomes effective when notice of acceptance is deposited in the mail. (*Palo Alto*, at pp. 503-505.)

Here, Henrich testified he prepared and hand-delivered to the Murphy Canyon representative his March 1, 2002 letter, which states, "I am exercising my option to extend my lease for Suite 130." This evidence supports the trial court's conclusion that Henrich had validly exercised the renewal option. Under *Palo Alto, supra*, 11 Cal.3d at p. 505, Henrich's exercise was effective on the date of the letter's personal delivery, and created a binding contract that Henrich could have sought to enforce against Seapoint, the undisputed successor-in-interest optionor, via a suit for specific performance in which the trier of fact would determine base rent under the parties' mutually agreed formula. (*Goodwest Rubber Corp. v. Munoz, supra*, 170 Cal.App.3d at p. 921.)

The trial court further found Henrich's exercise of the option was reflected in the estoppel certificate, which was entitled to presumptive effect under Evidence Code section 622 and bound Henrich to the statement therein that his lease ended in June 2005 at a base rent of $1350 per month. Henrich does not meaningfully challenge this legal conclusion, he argues the issue as to the estoppel certificate is a red herring because

Seapoint "repudiated" the estoppel certificate and in particular the representation that Henrich's base rent was $1350. Henrich ignores the trial court's factual finding that Seapoint "never repudiated the exercised option but sought to negotiate against it." As Seapoint points out, the trial court's conclusion is supported by Seaman's testimony that he relied upon and accepted the estoppel certificate, as well as evidence that Seaman ultimately sought to enforce the option when he could not negotiate a new lease with Henrich. Seapoint also points out there is no evidence it gave Henrich notice of increased rent or delivered invoices for holdover rent; such conduct would have indicated it believed it was not bound by an enforceable lease under the option. We agree the evidence permits a reasonable inference in support of the trial court's factual finding, which we have no power to disturb. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925.)

Our conclusion that valid exercise of the option did not require the parties' mutual agreement on base rent ends the inquiry as to Henrich's tenancy status. Henrich concedes "[i]f the option exercise was complete without an agreement on the amount of rent, then [he] was a tenant for years." Henrich further concedes that if the estoppel certificate was binding on Seapoint – a conclusion implicitly if not expressly reached by the trial court – "the case is over."

III. *Exclusion of Attorney Statement*

Henrich contends the trial court erred by excluding on Seapoint's hearsay objection evidence of a statement made by Seapoint's attorney that if Seapoint and Henrich were not able to agree upon rent under the option, Seapoint would evict him.

Specifically, Henrich maintains the attorney's statement falls within the party exception to the hearsay rule of Evidence Code section 1220[2] and that the evidence is relevant to show Seapoint's opinion or belief as to his tenancy status. Henrich points to the following exchange:

"[Henrich's counsel]: In January of '04, did Mr. Seaman's then attorney ever indicate that you were at risk of eviction?

"[Seapoint's counsel]: Objection. Again, asking for hearsay, what Mr. Spilger told Mr. Henrich, and Mr. Spilger has not been identified as a witness.

"The Court: Sustained.

"[Henrich's counsel]: He is an agent of the plaintiff.

"The Court: Sustained.

"[Henrich's counsel]: Your Honor, he speaks for the plaintiff.

"The Court: Sustained."

We review the court's decision to exclude proffered evidence for abuse of discretion, the standard that generally applies to appellate review of a trial court's evidentiary rulings. "The trial court is 'vested with broad discretion in ruling on the admissibility of evidence.' [Citation.] '[T]he court's ruling will be upset only if there is a clear showing of an abuse of discretion.' [Citation.] ' "The appropriate test for abuse of

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2 Evidence Code section 1220 provides: "Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity."

discretion is whether the trial court exceeded the bounds of reason." ' " (*Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431; see also *People v. Brown* (2003) 31 Cal.4th 518, 534; *Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 972.) Where evidence is found to be erroneously excluded, the ultimate question on appeal is whether absent that error it is reasonably probable a result more favorable to the appellants would have been reached. (*Tudor Ranches*, at pp. 1431-1432.)

Henrich has not shown the trial court clearly abused its discretion in ruling that the party admission or authorized admission exceptions (Evid. Code, §§ 1220, 1222[3]) were not applicable to the proffered statement. He provides no authority or analysis as to applicability of the party admission exception under Evidence Code section 1220, and we are unconvinced it applies here based on his bald assertion. If any hearsay exception applies, it would be the authorized admission exception of Evidence Code section 1222. Seapoint's attorney's statement could only qualify as a nonhearsay admission of a party if the attorney was authorized by Seapoint to speak on the subject he addressed. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1077; *Morgan v. Regents of University of Cal.* (2000) 88 Cal.App.4th 52, 70; *O'Mary v. Mitsubishi Electronics America, Inc.* (1997) 59 Cal.App.4th 563, 570.) California law has

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3 "[Evidence Code s]ection 1222 provides a hearsay exception for authorized admissions. Under this exception, if a party authorized an agent to make statements on his [or her] behalf, such statements may be introduced against the party under the same conditions as if they had been made by the party himself [or herself]. The authority of the declarant to make the statement need not be express; it may be implied. It is to be determined in each case under the substantive law of agency." (Cal. Law Revision Com. com., 29B Pt.4 West's Ann. Evid. Code (1995 ed.) foll. Evid. Code, § 1222, p. 159.)

interpreted this exception as only applying to high-ranking organizational agents who have actual authority to speak on behalf of the organization. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 169, citing *Snider v. Superior Court* (2003) 113 Cal.App.4th 1187, 1203; see also *O'Mary*, at p. 572 [statement on behalf of organization admissible because author held a "particularly high place in the employer's hierarchy" and evidence showed authorization to speak on its behalf].) The determination depends on application of the substantive law of agency, entailing "an examination of the nature of the employee's usual and customary authority, the nature of the statement in relation to that authority, and the particular relevance or purpose of the statement." (*O'Mary*, at p. 570.) Thus, a proper foundation is required: an agent's hearsay statement may be offered "either after admission of evidence sufficient to sustain a finding of such authority or, in the court's discretion as to the order of proof, subject to the admission of such evidence." (Evid. Code, § 1222, subd. (b).)

At trial, Henrich testified that Spilger called him representing himself as Seaman's attorney, and that "the topics we discussed indicated that he was speaking on behalf of the landlord." When the trial court ruled on Seapoint's hearsay objection, Henrich did not expand on this showing by an offer of proof, nor did he make any further offer of proof about Spilger's role or scope of authority to speak on Seapoint's behalf in his posttrial affidavit in support of his new trial motion. We conclude the trial court properly exercised its discretion in concluding, at least implicitly, that Henrich's foundational showing was insufficient to establish that Spilger was actually authorized to speak on Seapoint's behalf, or that he held any high-ranking position with Seapoint with the

authority contemplated by Evidence Code section 1222. Henrich provides no authority for the proposition that Spilger's status as Seaman's or Seapoint's attorney is enough to infer such authorization. The court's ruling was not so arbitrary, capricious or patently absurd to constitute an abuse of discretion. (*Thompson v. County of Los Angeles*, *supra*, 142 Cal.App.4th at p. 168, citing *People v. Rodriquez* (1999) 20 Cal.4th 1, 9-10.)

Finally, Henrich cannot demonstrate prejudice, that is, that the trial court would have reached a different conclusion as to the status of Henrich's tenancy had it admitted the statement. (Cal. Const., art. VI, § 13; *Tudor Ranches*, *supra*, 65 Cal.App.4th at pp. 1431-1432.) As Henrich acknowledges and Seapoint points out, the issue of Henrich's status as a tenant for a term of years turns on a question of law based on an interpretation of the option; Seapoint's attorney's belief was not determinative. But Henrich proceeds to argue prejudice, narrowly focusing on the portion of the trial court's statement of decision in which the court states, "[Seapoint] never claimed that [Henrich] had a 30-day option out . . . ." Henrich maintains this demonstrates the trial court somehow believed his tenancy status depended upon Seapoint's belief, and he argues that a finding by the trial court that Seapoint actually believed Henrich was a month-to-month tenant may have resulted in a different judgment.

Henrich's assertion as to prejudice fails. The trial court made its cited statement in finding Henrich always asserted he had a lease extension and neither party made statements during their negotiations indicating Henrich's tenancy was month-to-month; the trial court did not conclude that Seapoint's belief was determinative on the status of

Henrich's tenancy.[4] In any event, Henrich's cursory argument states only an " 'abstract possibility' " of a different outcome; such a showing does not demonstrate the requisite miscarriage of justice. (*Cassim v. Allstate* (2004) 33 Cal.4th 780, 800.)

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.

4 In this portion of its statement of decision, the court stated: "On April 15th, 2004, Mr. Henrich created and then caused to be delivered a Notice of Intent to Vacate the property, and the Court finds the testimony such that [Seapoint] never claimed to [Henrich] that the status of the lease was that of a month-to-month tenancy. [Seapoint] never claimed that [Henrich] had a 30-day option out, and [Henrich] never claimed in prior discussions or negotiations that he considered himself to be a month-to-month tenant or had the right to exercise a 30-day notice and quit the property. [¶] Mr. Henrich at all times until the notice of termination claimed at all times to have a lease extension to June 5th, 2005[,] and never claimed that, by absence of an agreement otherwise, that it was changed to a month-to-month tenancy."